

IP 05-0350-M 1 F USA v Mason
Magistrate Kennard P. Foster

Signed on 10/21/05

NOT INTENDED FOR PUBLICATION IN PRINT

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
v.)	
)	CAUSE NO. IP 05-0350M-01
STEVEN M. MASON,)	
)	
Defendant.)	

ENTRY AND ORDER OF DETENTION PENDING TRIAL

SUMMARY

Steven Mason is charged in a criminal complaint that issued on August 30, 2005, with five counts of robbery affecting interstate commerce in violation of 18 U.S.C. § 1951(a) and five counts of using a firearm during and in relation to those robberies in violation of 18 U.S.C. § 924(c). On October 7, 2005, at the initial appearance, the government moved for detention pursuant to 18 U.S.C. § 3142 (f)(1)(A) on the grounds that this case involves a crime of violence.

A detention hearing was held on October 13, 2005. The United States appeared by Assistant United States Attorney Josh J. Minkler for James P. Hanlon. Steven Mason appeared in person and by his appointed counsel, Kevin McShane. The government established by clear and convincing evidence, predicated upon the facts giving rise to the criminal complaint, and Mr. Mason's criminal history and record, that no condition or combination of conditions will reasonably assure the safety of the community if he is released. The government further established by clear and convincing evidence, also predicated upon the

facts giving rise to the Indictment, and Mr. Mason's criminal history and record, that there is no condition or combination of conditions which will reasonably assure Mr. Mason's appearance as required. The Court ordered that Mr. Mason be detained.

**FINDINGS OF FACT AND
CONCLUSIONS OF LAW**

1. Steven Mason is charged in this cause by a criminal complaint with five counts of robbery affecting interstate commerce in violation of 18 U.S.C. § 1951(a) and five counts of using a firearm during and in relation to those robberies in violation of 18 U.S.C. § 924(c).

The court takes judicial notice of the criminal complaint and the supporting affidavit.

2. The maximum penalties for violating 18 U.S.C. § 1951(a) include 20 years' incarceration, 5 years of supervised release, and a fine of \$250,000. The maximum penalties for violating 18 U.S.C. § 924(c) as charged in the complaint are not less than seven years consecutive for the first count and not less than 25 years for each count thereafter.

3. The Court admitted as Exhibit 1 the Pre-Trial Services Report prepared by the U.S. Probation Office on the issue of Mr. Mason's release or detention. Neither party objected to the admission of Exhibit 1.

4. Exhibit 1 demonstrates Mr. Mason's criminal history to include a felony conviction for resisting law enforcement. After being sentenced in that case, Mr. Mason failed to report to probation, failed to attend substance abuse counseling, and failed to report a change in address. Consequently, Mason's probation was revoked and he was sentenced to 500 days' incarceration.

5. The government submitted the issue of detention on the Complaint and Affidavit. Mr. Mason did not present any evidence.

6. Mr. Mason qualifies for a detention hearing upon the government's motion that this case involves a crime of violence. 18 U.S.C. § 3142(f)(1)(A). Mr. Mason is charged with multiple counts of robbery and using a firearm during and in relation to those robberies.

7. Pursuant to 18 U.S.C. § 3142(e), a presumption of detention arises because this case involves charges under 18 U.S.C. § 924(c).

8. Mason has not rebutted this presumption. Even if he did, the evidence relevant to the factors set forth in 18 U.S.C. § 3142(g) requires that Mr. Mason be detained as there is no condition or combination of conditions of release sufficient to reasonably assure that he will appear as required for further proceedings, and will not engage in dangerous criminal activity pending trial. Therefore, Mr. Mason is ORDERED DETAINED.

9. When evaluating the government's motion for pretrial detention, the Court engages a two-step analysis: first, the Court determines whether one of six conditions exists for considering a defendant for pretrial detention; second, after a hearing, the Court determines whether the standard for pretrial detention is met. *See United States v. Friedman*, 837 F.2d 48, 49 (2d Cir. 1988).

A defendant may be considered for pretrial detention in only six circumstances: when a case involves one of either four types of offenses or two types of risks. A defendant is eligible for detention upon motion by the United States in cases involving: (1) a crime of violence; (2) an offense with a maximum punishment of life imprisonment or death; (3) specified drug offenses carrying a maximum term of imprisonment of ten years or more; or (4) any felony where the defendant has two or more federal convictions for the above offenses or state convictions for identical offenses. *See* 18 U.S.C. § 3142(f)(1). A defendant is eligible for

detention upon motion by the United States or the Court *sua sponte* in cases involving: (5) a serious risk that the person will flee; or (6) a serious risk that the defendant will obstruct or attempt to obstruct justice, or threaten, injure, or intimidate, a prospective witness or juror. *See* § 3142(f)(2); *United States v. Sloan*, 820 F. Supp. 1133, 1135-36 (S.D. Ind. 1993). The existence of any of these six conditions triggers the detention hearing which is a prerequisite for an order of pretrial detention. *See* 18 U.S.C. §3142(e). The judicial officer determines the existence of these conditions by a preponderance of the evidence. *Friedman*, 837 F.2d at 49. *See also United States v. DeBeir*, 16 F. Supp.2d 592, 595 (D. Md. 1998) (serious risk of flight); *United States v. Carter*, 996 F. Supp. 260, 265 (W.D. N.Y. 1998) (same). In this case, the United States moved for detention pursuant to 18 U.S.C. §§ 3142(f)(1)(A). The Court has found that the government satisfied its burden of establishing that this basis exists.

Once it is determined that a defendant qualifies under any of the six conditions set forth in Section 3142(f), the court may order a defendant detained before trial if the judicial officer finds that no condition or combination of conditions will reasonably assure the appearance of the person as required and the safety of any other person and the community. *See* 18 U.S.C. § 3142(e). Detention may be based on a showing of either dangerousness or risk of flight; proof of both is not required. *See United States v. Fortna*, 769 F.2d 243, 249 (5th Cir. 1985). With respect to reasonably assuring the appearance of the defendant, the United States bears the burden of proof by a preponderance of the evidence. *See United States v. Portes*, 786 F.2d 758, 765 (7th Cir. 1985); *United States v. Himler*, 797 F.2d 156, 161 (3d Cir. 1986); *United States v. Vortis*, 785 F.2d 327, 328-29 (D.C. Cir.), *cert. denied*, 479 U.S. 841, 107 S. Ct. 148, 93 L.Ed.2d 89 (1986); *Fortna*, 769 F.2d at 250; *United States v. Chimurenga*, 760 F.2d 400, 405-

06 (2d Cir. 1985); *United States v. Orta*, 760 F.2d 887, 891 & n. 20 (8th Cir. 1985); *United States v. Leibowitz*, 652 F. Supp. 591, 596 (N.D. Ind. 1987).

With respect to reasonably assuring the safety of any other person and the community, the United States bears the burden of proving its allegations by clear and convincing evidence. 18 U.S.C. § 3142(f); *United States v. Salerno*, 481 U.S. 739, 742, 107 S. Ct. 2095, 2099, 95 L.Ed.2d 697 (1987); *Portes*, 786 F.2d at 764; *Orta*, 760 F.2d at 891 & n. 18; *Leibowitz*, 652 F. Supp. at 596; *United States v. Knight*, 636 F.Supp. 1462, 1465 (S.D. Fla. 1986). Clear and convincing evidence is something more than a preponderance of the evidence but less than proof beyond a reasonable doubt. *Addington v. Texas*, 441 U.S. 418, 431-33, 99 S. Ct. 1804, 1812-13, 60 L.Ed.2d 323 (1979). The standard for pretrial detention is “reasonable assurance”; a court may not order pretrial detention because there is no condition or combination of conditions which would *guarantee* the defendant’s appearance or the safety of the community. *Portes*, 786 F.2d at 764 n. 7; *Fortna*, 769 F.2d at 250; *Orta*, 760 F.2d at 891-92.

10. The Court further considers the evidence presented on the issue of release or detention weighed in accordance with the factors set forth in 18 U.S.C. § 3142(g) and the legal standards set forth above. Among the factors considered both on the issue of flight and dangerousness to the community are the defendant’s character, physical and mental condition, family ties, employment, financial resources, length of residence in the community, community ties, past conduct, history relating to drug or alcohol abuse, criminal history, and record concerning appearances at court proceedings. 18 U.S.C. § 3142(g)(3)(A). The presence of community ties and related ties have been found to have no correlation with the

issue of safety of the community. *United States v. Delker*, 757 F.2d 1390, 1396 (3rd Cir. 1985); S.Rep. No. 98-225, 98th Cong., 1st Sess. at 24, *reprinted in* 1984 U.S. Code Cong. & Admin. News 3182, 3207-08.

11. In this regard, the Court finds and concludes that the evidence in this case demonstrates the following:

- a. This case involves a crime of violence.
- b. A rebuttable presumption in favor of pre-trial detention applies because Mr. Mason is charged under 18 U.S.C. § 924(c). Mr. Mason has not rebutted the presumption of detention.
- c. Even if Mr. Mason had rebutted the presumption in favor of pre-trial detention, the Court nonetheless finds that he should be detained in light of the factors set forth in 18 U.S.C. § 3142(g). Mr. Mason has had persistent and continuous contacts with law enforcement. In light of the number and nature of these contacts, Mr. Mason has established a pattern of disregarding the law and engaging in violent conduct. If released, he will not follow the law or the conditions of pre-trial release. Mr. Mason presents a serious risk of danger to the community.
- d. The evidence presented demonstrates a high probability that Mr. Mason will be convicted of the charged offense.

The Court having weighed the evidence regarding the factors found in 18 U.S.C. § 3142(g), and based upon the totality of evidence set forth above, concludes that the Defendant clearly and convincingly is a serious risk of flight and a danger to the community.

WHEREFORE, Steven Mason is hereby committed to the custody of the Attorney General or his designated representative for confinement in a corrections facility separate, to the extent practicable, from persons awaiting or serving sentences or being held in custody pending appeal. He shall be afforded a reasonable opportunity for private consultation with defense counsel. Upon order of this Court or on request of an attorney for the government, the person in charge of the corrections facility shall deliver the defendant to the United States Marshal for the purpose of an appearance in connection with a Court proceeding.

Dated this ____ day of October, 2005.

Kennard P. Foster, Magistrate Judge
United States District Court

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U. S. Probation, Pre-Trial Services

U. S. Marshal Service